

Title 9-A: MAINE CONSUMER CREDIT CODE

Article 13: Maine Secure and fair enforcement for Mortgage Licensing Act of 2009

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Maine Revised Statutes
Title 9-A: MAINE CONSUMER CREDIT CODE
Article 13: Maine Secure and fair enforcement
for Mortgage Licensing Act of 2009

§13-101. SHORT TITLE

This Article may be known and cited as "the Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009." [2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW) .

§13-102. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 362, Pt. B, §1 (NEW) .]

1. Clerical or support duties. "Clerical or support duties" may include subsequent to the receipt of an application:

A. The receipt, collection, distribution and analysis of information common for the processing, underwriting or modification of a residential mortgage loan; and [2009, c. 362, Pt. B, §1 (NEW) .]

B. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. [2009, c. 362, Pt. B, §1 (NEW) .]

[2009, c. 362, Pt. B, §1 (NEW) .]

1-A. Credit sale. "Credit sale" means the sale of a dwelling or residential real estate purchased for a personal, family or household purpose in which credit is extended by the seller and either the debt is payable in installments or a finance charge is made.

[2011, c. 289, §1 (NEW); 2011, c. 289, §5 (AFF) .]

2. Depository institution. "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Dwelling. "Dwelling" has the same meaning as in the federal Truth in Lending Act, Section 103(v).

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Immediate family member. "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. "Immediate family member" includes stepparents, stepchildren, stepsiblings and adoptive relationships.

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Individual. "Individual" means a natural person.

[2009, c. 362, Pt. B, §1 (NEW) .]

6. Loan processor or underwriter. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under the provisions of this Title. An individual engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

[2009, c. 362, Pt. B, §1 (NEW) .]

7. Mortgage loan originator. "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

A. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 13-103, subsection 3, paragraph A; [2009, c. 362, Pt. B, §1 (NEW) .]

B. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with the laws of this State, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; or [2009, c. 362, Pt. B, §1 (NEW) .]

C. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 United States Code, Section 101(53D). [2009, c. 362, Pt. B, §1 (NEW) .]

[2009, c. 362, Pt. B, §1 (NEW) .]

8. Nationwide mortgage licensing system and registry. "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by a national organization dedicated to advancing the state banking system and a national association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

[2009, c. 362, Pt. B, §1 (NEW) .]

9. Nontraditional mortgage product. "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

[2009, c. 362, Pt. B, §1 (NEW) .]

10. Person. "Person" means a natural person, corporation, company, limited liability company, partnership or association.

[2009, c. 362, Pt. B, §1 (NEW) .]

11. Real estate brokerage activity. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

A. Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property; [2009, c. 362, Pt. B, §1 (NEW) .]

B. Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property; [2009, c. 362, Pt. B, §1 (NEW) .]

C. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction; [2009, c. 362, Pt. B, §1 (NEW).]

D. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and [2009, c. 362, Pt. B, §1 (NEW).]

E. Offering to engage in any activity or act in any capacity, described in this subsection. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

12. Registered mortgage loan originator. "Registered mortgage loan originator" means an individual who:

A. Meets the definition of mortgage loan originator and is an employee of:

(1) A depository institution;

(2) A subsidiary that is:

(a) Owned and controlled by a depository institution; and

(b) Regulated by a federal banking agency; or

(3) An institution regulated by the federal Farm Credit Administration; and [2009, c. 362, Pt. B, §1 (NEW).]

B. Is registered with, and maintains a unique identifier through the nationwide mortgage licensing system and registry. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

13. Residential mortgage loan. "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. "Residential mortgage loan" does not include a credit sale unless the credit sale is determined to be a residential mortgage loan by any rule, advisory ruling or interpretation issued by the administrator or by the United States Department of Housing and Urban Development or successor federal agency responsible for ensuring state compliance with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 United States Code, Sections 5101 to 5113.

[2011, c. 289, §2 (AMD); 2011, c. 289, §5 (AFF).]

14. Residential real estate. "Residential real estate" means any real property located in the State, upon which is constructed or intended to be constructed a dwelling.

[2009, c. 362, Pt. B, §1 (NEW).]

15. Unique identifier. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §§1, 2 (AMD). 2011, c. 289, §5 (AFF).

§13-103. LICENSE AND REGISTRATION REQUIRED

1. Requirement. An individual, unless specifically exempted from this Article under subsection 2, may not engage in the business of a mortgage loan originator without obtaining and maintaining annually a license under this Article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

As used in this subsection, "engaging in the business of a mortgage loan originator" means the individual, in a commercial context and habitually or repeatedly:

- A. Takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain; or [2013, c. 295, §1 (NEW).]
- B. Represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform the activities described in paragraph A. [2013, c. 295, §1 (NEW).]

An individual is considered to be acting habitually or repeatedly under this subsection if the individual takes a residential mortgage application and offers or negotiates terms of a residential mortgage loan for compensation or gain more than 3 times in a 12-month period. An exemption from the licensure requirements under this Article does not apply if the individual, alone or with others, is found by the administrator to have acted so as to intentionally circumvent or evade the provisions of this subsection.

[2013, c. 295, §1 (AMD).]

2. Exemption. The following persons are exempt from this Article.

- A. Registered mortgage loan originators, when acting for a depository institution; a subsidiary that is owned and controlled by a depository institution and that is regulated by a federal banking agency; or an institution regulated by the federal Farm Credit Administration. [2009, c. 362, Pt. B, §1 (NEW).]
- B. An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual. [2009, c. 362, Pt. B, §1 (NEW).]
- C. An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence. [2009, c. 362, Pt. B, §1 (NEW).]
- D. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator. [2009, c. 362, Pt. B, §1 (NEW).]
- E. An employee of a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing for low-income people under a program designed specifically for that purpose, to the extent exempted by the administrator by rule, advisory ruling or interpretation, after taking into consideration any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development. [2009, c. 362, Pt. B, §1 (NEW).]
- F. A retail seller of a manufactured home to the extent determined by any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development. [2009, c. 362, Pt. B, §1 (NEW).]
- G. An individual who, during any calendar year or other 12-month period, takes applications for or offers or negotiates terms of not more than the maximum number of residential mortgage loans to qualify for exemption as determined by rule, advisory ruling or interpretation issued by the administrator or by the United States Department of Housing and Urban Development or successor federal agency

responsible for ensuring state compliance with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 United States Code, Sections 5101 to 5113. [2011, c. 289, §3 (NEW); 2011, c. 289, §5 (AFF).]

H. An individual who acts as a mortgage loan originator in providing financing for the sale of a property owned by that individual as long as that individual does not habitually or repeatedly engage in that activity. [2013, c. 295, §2 (NEW).]

I. An individual who acts as a mortgage loan originator as long as the source of prospective financing does not provide mortgage financing or perform other mortgage loan origination activities habitually or repeatedly. [2013, c. 295, §2 (NEW).]

J. An employee of a government entity who acts as a mortgage loan originator pursuant to that employee's official duties as an employee of that government entity. [2013, c. 295, §2 (NEW).]

[2013, c. 295, §2 (AMD).]

3. Loan processor or underwriter; license not required. A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or by providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator is not required to obtain and maintain a license under subsection 1.

A. An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless that independent contractor obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

4. Rules; interim procedures and accept applications. For the purposes of implementing an orderly and efficient licensing process, the administrator may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the administrator may establish expedited review and licensing procedures. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §3 (AMD). 2011, c. 289, §5 (AFF). 2013, c. 295, §§1, 2 (AMD).

§13-104. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE

1. Application form. An applicant for a license as a mortgage loan originator shall apply using a form prescribed by the administrator. The form must contain content as set forth by rule, instruction or procedure of the administrator and may be changed or updated as necessary by the administrator in order to carry out the purposes of this Article.

[2009, c. 362, Pt. B, §1 (NEW).]

2. Relationships or contracts. In order to fulfill the purposes of this Article, the administrator is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Waive or modify requirements. For the purpose of participating in the nationwide mortgage licensing system and registry, the administrator is authorized to waive or modify, in whole or in part, by rule or order, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Background checks. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

A. Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and [2009, c. 362, Pt. B, §1 (NEW) .]

B. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the administrator to obtain:

(1) An independent credit report from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p) except that information on a credit report may not be used as the sole basis for the denial of a mortgage loan originator license pursuant to section 13-105; and

(2) Information related to any administrative, civil or criminal findings by any governmental jurisdiction. [2009, c. 362, Pt. B, §1 (NEW) .]

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Agent for purposes of requesting and distributing criminal information. For the purposes of this section and in order to reduce the points of contact that the administrator or the Federal Bureau of Investigation may have to maintain for purposes of subsection 4, the administrator may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency and from any source directed by the administrator.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW) .

§13-105. ISSUANCE OF LICENSE

The administrator may not issue an applicant a mortgage loan originator license unless the applicant meets the following requirements. [2009, c. 362, Pt. B, §1 (NEW) .]

1. No license revocation. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction.

[2009, c. 362, Pt. B, §1 (NEW) .]

2. No felony conviction. Except if the administrator determines that a conviction as described in paragraph A does not affect the applicant's demonstration of good character and fitness under subsection 3, the applicant has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign or military court:

A. During the 7-year period preceding the date of the application for licensing and registration; or
[2009, c. 362, Pt. B, §1 (NEW) .]

B. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering. [2009, c. 362, Pt. B, §1 (NEW) .]

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Character and fitness. The applicant has demonstrated financial responsibility, good character and general fitness commanding the confidence of the community and warranting a determination that the mortgage loan originator will operate honestly, fairly and efficiently in accordance with this Article.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Prelicensing education. The applicant has completed the prelicensing education requirement described in section 13-106.

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Written test. The applicant has passed a written test that meets the requirement described in section 13-107.

[2009, c. 362, Pt. B, §1 (NEW) .]

6. Surety bond or minimum net worth requirement. The applicant has met the surety bond requirement or the net worth requirement as required pursuant to section 13-113.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW) .

§13-106. PRELICENSING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

1. Minimum education requirements. In order to meet the prelicensing education requirement set forth in section 13-105, subsection 4, a person must complete at least 20 hours of education approved in accordance with subsection 2.

A. [2013, c. 466, §8 (RP) .]

B. [2013, c. 466, §8 (RP) .]

C. [2013, c. 466, §8 (RP) .]

[2013, c. 466, §8 (AMD) .]

2. Approved education courses. For purposes of subsection 1, preclicensing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based on reasonable standards. Review and approval of a preclicensing education course must include review and approval of the course provider.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Approval of employer and affiliate education courses. Nothing in this section precludes any preclicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Venue of education. Preclicensing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Reciprocity of education. The completion of the preclicensing education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of preclicensing education requirements in this State.

[2009, c. 362, Pt. B, §1 (NEW) .]

6. Relicensing education requirements. A person previously licensed under this Article who applies to be licensed again must prove that that person has completed all of the continuing education requirements for the year in which the license was last held.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §8 (AMD).

§13-107. TESTING OF MORTGAGE LOAN ORIGINATORS

1. Written test. In order to meet the written test requirement required under section 13-105, subsection 5, an individual must pass, in accordance with the standards established under this section, a written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

[2013, c. 466, §9 (AMD) .]

2. Qualified test.

[2013, c. 466, §9 (RP) .]

3. Testing location. Nothing in this section prohibits a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant, or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Minimum competence. An individual is not considered to have passed a written test unless the individual achieves a test score of not less than 75% correct answers to questions.

A. An individual may retake a test 3 consecutive times, undergoing each consecutive test at least 30 days after the preceding test. [2009, c. 362, Pt. B, §1 (NEW).]

B. After failing 3 consecutive tests, an individual must wait at least 6 months before taking the test again. [2009, c. 362, Pt. B, §1 (NEW).]

C. A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test. [2009, c. 362, Pt. B, §1 (NEW).]

[2013, c. 466, §9 (AMD) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §9 (AMD).

§13-108. STANDARDS FOR LICENSE RENEWAL

1. Minimum standards. The minimum standards for license renewal for mortgage loan originators include the following:

A. The mortgage loan originator continues to meet the minimum standards for license issuance under section 13-105, subsections 1 to 5; [2009, c. 362, Pt. B, §1 (NEW).]

B. The mortgage loan originator has satisfied the annual continuing education requirements described in section 13-109; and [2009, c. 362, Pt. B, §1 (NEW).]

C. The mortgage loan originator has paid all required fees for renewal of the license. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

2. Failure to satisfy minimum standards of license renewal. If a mortgage loan originator fails to satisfy the minimum standards for license renewal, that individual's license expires. The administrator may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-109. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

1. Requirement. In order to meet the annual continuing education requirements set forth in section 13-108, subsection 1, paragraph B, a licensed mortgage loan originator must complete at least 8 hours of education approved in accordance with subsection 2.

A. [2013, c. 466, §10 (RP).]

B. [2013, c. 466, §10 (RP).]

C. [2013, c. 466, §10 (RP).]

[2013, c. 466, §10 (AMD) .]

2. Approved education courses. For purposes of subsection 1, continuing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course includes review and approval of the course provider.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Approval of employer and affiliate education courses. Nothing in this section precludes any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Venue of education. Continuing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Calculation of continuing education credits. A licensed mortgage loan originator may:

A. Notwithstanding section 13-108, subsection 2, receive credit for a continuing education course only in the year in which the course is taken; and [2013, c. 466, §11 (AMD) .]

B. Not repeat an approved course in the same or successive years to meet the annual requirements for continuing education. [2009, c. 362, Pt. B, §1 (NEW) .]

[2013, c. 466, §11 (AMD) .]

6. Instructor credit.

[2013, c. 466, §12 (RP) .]

7. Reciprocity of education. The completion of the education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of continuing education requirements in this State.

[2009, c. 362, Pt. B, §1 (NEW) .]

8. Lapse in license. A person previously licensed under this Article as a licensed mortgage loan originator who subsequently becomes unlicensed must prove that the person has completed all of the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

[2009, c. 362, Pt. B, §1 (NEW) .]

9. Deficiency in continuing education.

[2013, c. 466, §13 (RP) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §§10-13 (AMD).

§13-110. AUTHORITY TO REQUIRE LICENSE

In addition to any other duties imposed upon the administrator by law, the administrator shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the administrator is authorized to participate in the nationwide mortgage licensing system and registry. For this purpose, the administrator may establish, by rule or order, requirements as necessary, including but not limited to: [2009, c. 362, Pt. B, §1 (NEW).]

1. Background checks. Background checks for:

A. Criminal history through fingerprint or other databases; [2009, c. 362, Pt. B, §1 (NEW).]

B. Civil or administrative records; [2009, c. 362, Pt. B, §1 (NEW).]

C. Credit history; or [2009, c. 362, Pt. B, §1 (NEW).]

D. Any other information determined necessary by the nationwide mortgage licensing system and registry; [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

2. Fees. The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry, that fee being initially established in the amount of \$20 to the administrator at application and \$20 for renewal, subject to adjustment pursuant to rule or order as set forth under this section. Renewal applications received after the due date are subject to an additional fee of \$100;

[2013, c. 466, §14 (AMD).]

3. Dates. The setting or resetting as necessary of renewal or reporting dates; and

[2009, c. 362, Pt. B, §1 (NEW).]

4. Other requirements. Other requirements for amending or revoking a license or any other such activities as the administrator considers necessary for participation in the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 427, Pt. B, §20 (AMD). 2013, c. 466, §14 (AMD).

§13-111. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS

The administrator shall establish a process by which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the administrator. [2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-112. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES

1. Enforcement. In order to ensure the effective supervision and enforcement of this Article, the administrator may, pursuant to this Title and the Maine Administrative Procedure Act:

A. Deny, suspend, revoke, condition or decline to renew a license for a violation of this Article or rules issued under this Article or an order or a directive entered under this Article; [2009, c. 362, Pt. B, §1 (NEW).]

B. Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 13-105 or section 13-108, or withholds information or makes a material misstatement in an application for a license or renewal of a license; [2009, c. 362, Pt. B, §1 (NEW).]

C. Order restitution against persons subject to this Article for violations of this Article; [2009, c. 362, Pt. B, §1 (NEW).]

D. Impose fines on persons subject to this Article pursuant to subsections 2 to 4; and [2009, c. 362, Pt. B, §1 (NEW).]

E. Issue orders or directives under this Article as follows:

(1) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(3) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under section 13-103, subsection 4 if the administrator determines that such a license was erroneously granted or the licensee is in violation of this Article; and

(4) Order or direct other affirmative action that the administrator considers necessary. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

2. Penalty. The administrator may impose a civil fine on a mortgage loan originator or person subject to this Article if the administrator finds on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Article has violated or failed to comply with any requirement of this Article or any rule prescribed by the administrator under this Article or order issued under authority of this Article.

[2009, c. 362, Pt. B, §1 (NEW).]

3. Maximum fine. A person who violates this section commits a civil violation for each act or omission described in subsection 2, a fine for which no more than \$25,000 must be adjudged.

[2009, c. 362, Pt. B, §1 (NEW).]

4. Separate violation. Each violation or failure to comply with any directive or order of the administrator is a separate and distinct violation or failure.

[2009, c. 362, Pt. B, §1 (NEW).]

5. Effect on mortgage loans. This article may not be construed to provide that a mortgage loan originator's good faith failure to comply with the requirements of this article affects the validity or enforceability of the obligations under any residential mortgage loan resulting from a transaction in which the mortgage loan originator participated.

[2011, c. 289, §4 (NEW); 2011, c. 289, §5 (AFF).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §4 (AMD). 2011, c. 289, §5 (AFF).

§13-113. SURETY BOND OR MINIMUM NET WORTH REQUIREMENTS

Mortgage loan originators must comply with either subsection 1 or subsection 2. [2009, c. 362, Pt. B, §1 (NEW).]

1. Surety bond. Unless in compliance with subsection 2, a mortgage loan originator must be covered by a surety bond in accordance with this subsection.

A. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the surety bond of that person subject to this Article can be used in lieu of the mortgage loan originator's surety bond requirement.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount prescribed in paragraph B.

(2) The surety bond must be in a form prescribed by the administrator.

(3) The administrator may adopt rules with respect to the requirements for surety bonds necessary to accomplish the purposes of this Article. [2009, c. 362, Pt. B, §1 (NEW).]

B. The penal sum of the surety bond must be maintained in an amount established by rule. [2009, c. 362, Pt. B, §1 (NEW).]

C. When an action is commenced on a licensee's bond, the administrator may require the filing of a new bond. [2009, c. 362, Pt. B, §1 (NEW).]

D. Immediately on recovery upon any action on the bond the licensee shall file a new bond. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

2. Minimum net worth. Unless in compliance with subsection 1, a minimum net worth must be continuously maintained for mortgage loan originators in accordance with this subsection and section 13-105, subsection 6. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of that person subject to this Article can be used in lieu of the mortgage loan originator's minimum net worth requirement.

A. Minimum net worth must be maintained in an amount determined by the administrator. [2009, c. 362, Pt. B, §1 (NEW).]

B. The administrator may adopt rules with respect to the requirements for minimum net worth necessary to accomplish the purposes of this Article. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-114. CONFIDENTIALITY

1. Protections. Notwithstanding any provision of law to the contrary and except as otherwise provided in federal Public Law 110-289, Section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to that information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. That

information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

[2009, c. 362, Pt. B, §1 (NEW) .]

2. Agreements and sharing arrangements. The administrator is authorized to enter agreements or sharing arrangements with other governmental agencies, a national organization dedicated to advancing the state banking system, a national association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the administrator.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Nonapplicability of certain requirements. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:

A. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or [2009, c. 362, Pt. B, §1 (NEW) .]

B. Subpoena, discovery or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding that information or material, the person to whom such information or material pertains waives, in whole or in part, that privilege. [2009, c. 362, Pt. B, §1 (NEW) .]

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Public access to information. This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-115. INVESTIGATION AND EXAMINATION AUTHORITY

In addition to any authority allowed under this Article, the administrator may conduct an investigation and examination as follows. [2009, c. 362, Pt. B, §1 (NEW) .]

1. Authority to access information. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination or general or specific inquiry or investigation to determine compliance with this Article, the administrator may access, receive and use any books, accounts, records, files, documents, information or evidence, including but not limited to:

A. Criminal, civil and administrative information, including confidential criminal history record information as defined in Title 16, section 703, subsection 2; [2013, c. 267, Pt. B, §3 (AMD) .]

B. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p); and [2009, c. 362, Pt. B, §1 (NEW) .]

C. Any other documents, information or evidence the administrator determines relevant to the inquiry or investigation regardless of the location, possession, control or custody of those documents, information or evidence. [2009, c. 362, Pt. B, §1 (NEW).]

[2013, c. 267, Pt. B, §3 (AMD) .]

2. Investigation, examination and subpoena authority. For the purposes of investigating violations or complaints arising under this Article or for the purposes of examination the administrator may review, investigate or examine any licensee, individual or person subject to this Article as often as necessary. The administrator may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of an examination or investigation and may direct, subpoena or order those persons to produce books, accounts, records, files and any other documents the administrator considers relevant to the inquiry.

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Availability of books and records. Each licensee, individual or person subject to this Article shall make available to the administrator upon request the books and records relating to the operations of that licensee, individual or person. The administrator has access to such books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person concerning their business.

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Reports and other information as directed. Each licensee, individual or person subject to this Article shall make or compile reports or prepare other information as directed by the administrator in order to carry out the purposes of this section, including but not limited to:

A. Accounting compilations; [2009, c. 362, Pt. B, §1 (NEW).]

B. Information lists and data concerning loan transactions in a format prescribed by the administrator; and [2009, c. 362, Pt. B, §1 (NEW).]

C. Other information considered necessary to carry out the purposes of this section. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Control access to records. In making any examination or investigation authorized by this Article, the administrator may control access to any documents and records of the licensee or person under examination or investigation. The administrator may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person may remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the administrator. Unless the administrator has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct ordinary business affairs.

[2009, c. 362, Pt. B, §1 (NEW) .]

6. Additional authority. In order to carry out the purposes of this section, the administrator may:

A. Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations; [2009, c. 362, Pt. B, §1 (NEW) .]

B. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section; [2009, c. 362, Pt. B, §1 (NEW).]

C. Use, hire, contract or employ public analytic methods or privately available analytic methods or software to examine or investigate the licensee, individual or person subject to this Article; [2009, c. 362, Pt. B, §1 (NEW).]

D. Accept and rely on examination or investigation reports made by other government officials within or without this State; [2009, c. 362, Pt. B, §1 (NEW).]

E. Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the administrator; or [2009, c. 362, Pt. B, §1 (NEW).]

F. Assess the cost of the services described in paragraph A against the licensee, individual or person subject to this Article. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

7. Effect of authority. The authority of this section remains in effect, whether such a licensee, individual or person subject to this Article acts or claims to act under any licensing or registration law of this State or claims to act without such authority.

[2009, c. 362, Pt. B, §1 (NEW) .]

8. Withhold records. A licensee, individual or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 267, Pt. B, §3 (AMD).

§13-116. PROHIBITED ACTS AND PRACTICES

It is a violation of this Article for an individual or a person subject to this Article to: [2009, c. 362, Pt. B, §1 (NEW).]

1. Defraud; mislead. Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud a person;

[2009, c. 362, Pt. B, §1 (NEW) .]

2. Unfair or deceptive practice. Engage in any unfair or deceptive practice toward a person;

[2009, c. 362, Pt. B, §1 (NEW) .]

3. Fraud; misrepresentation. Obtain property by fraud or misrepresentation;

[2009, c. 362, Pt. B, §1 (NEW) .]

4. Fee despite absence of loan obtained. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Article may earn a fee or commission through best efforts to obtain a loan even though a loan is not actually obtained for the borrower;

[2009, c. 362, Pt. B, §1 (NEW) .]

5. Terms available. Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

[2009, c. 362, Pt. B, §1 (NEW) .]

6. Valid license. Conduct any business covered by this Article without holding a valid license as required under this Article or assist or aide and abet any person in the conduct of business under this Article without a valid license required under this Article;

[2009, c. 362, Pt. B, §1 (NEW) .]

7. Disclosures. Fail to make disclosures required by this Article and any other applicable state laws or rules or federal laws or regulations;

[2009, c. 362, Pt. B, §1 (NEW) .]

8. Compliance. Fail to comply with this Article or rules adopted under this Article or fail to comply with any other state or federal law, including the rules and regulations applicable to any business authorized or conducted under this Article;

[2009, c. 362, Pt. B, §1 (NEW) .]

9. False or deceptive statement. Make any false or deceptive statement or representation, including with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

[2009, c. 362, Pt. B, §1 (NEW) .]

10. False statement; material omission. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the administrator or another government agency;

[2009, c. 362, Pt. B, §1 (NEW) .]

11. Improper influence. Make any payment, threat or promise directly or indirectly to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise directly or indirectly to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

[2009, c. 362, Pt. B, §1 (NEW) .]

12. Prohibited fee. Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Article;

[2009, c. 362, Pt. B, §1 (NEW) .]

13. Excessive insurance. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

[2009, c. 362, Pt. B, §1 (NEW) .]

14. Account. Fail to truthfully account for money belonging to a party to a residential mortgage loan transaction; or

[2009, c. 362, Pt. B, §1 (NEW) .]

15. Good faith and fair dealing. Fail to comply with the duties of good faith and fair dealing as required in section 10-303-A.

[2009, c. 362, Pt. B, §1 (NEW) .]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-117. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

The administrator shall regularly report violations of this Article, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. [2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-118. UNIQUE IDENTIFIER SHOWN

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or publicly accessible websites and any other documents as established by rule or order of the administrator. [2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-119. RULEMAKING

Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 362, Pt. B, §1 (NEW).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

§13-120. EFFECTIVE DATE

This Article takes effect January 1, 2011. [2009, c. 497, §1 (AMD).]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2009, c. 497, §1 (AMD).

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